



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,561	09/09/2003	John Liccione	1744-703USPT	3308

58687 7590 07/05/2007
DUBOIS, BRYANT, CAMPBELL & SCHWARTZ, LLP
700 LAVACA STREET
SUITE 1300
AUSTIN, TX 78701

EXAMINER

ASSESSOR, BRIAN J

ART UNIT	PAPER NUMBER
----------	--------------

2114

MAIL DATE	DELIVERY MODE
-----------	---------------

07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,561

Applicant(s)

LICCIONE ET AL.

Examiner

Brian J. Assessor

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 17, 19 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 17, 19 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 17, 19, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer (6,920,579) in view of Wang (6,587,970) in view of Cowan (6,115,743).

As per claim 11, Cramer teaches:

An application monitoring and disaster recovery management system,
comprising:

a graphical user interface, in communications with said monitoring and management server module, (Cramer column 5, lines 25-28) capable of allowing a user to perform a failure switch-over from said primary computing environment to said secondary computing environment for said application in a single action; (Cramer column 5, lines 15-19)

wherein said graphical user interface is further capable of allowing a user to perform a switch-back from said secondary computing environment to said primary

Art Unit: 2114

computing environment for said application in a single action. (Cramer figure 4, element 402; the user has one step for initiating the switch-back operation)

whereby said system allows for disaster recovery and fault tolerance, and limits computing down-time experienced by end-users of said primary computing environment.(Cramer column 2, lines 59-64; column 4, lines 24-26)

Cramer does not explicitly disclose a primary computing environment, a secondary computing environment and a management server, executing a monitoring and management server module, that is in communications with said primary server and said secondary server.

In Wang figure 1, elements 110, 120, and 160, Wang clearly discloses using a management server to monitor a first and second server health conditions, and to issue a failover sequence between the two if a server fails. It would have been obvious to a person of ordinary skill in the art at the time of invention to include the server health monitoring system as taught Wang in order to create a better failover method. This would have been obvious because Wang teaches that the above method is better suited for a less expensive and more reliable monitoring system. (Wang column 1, line 65 – column 2, line 16.)

Cramer and Wang fail to explicitly disclose that the graphical user interface is capable of displaying the metric corresponding to each of said first plurality of intelligent agents.

In column 2, lines 59-65; Cowan clearly discloses a system wherein the GUI displays information from the monitoring and control of the servers on the network. It

Art Unit: 2114

would have been obvious to a person of ordinary skill in the art at the time of invention to modify Cramer to include the capability of the GUI to display the server information as taught by Cowan, in order to keep the user better informed of the status of the servers. This would have been obvious because both Cowan and Cramer use GUI for server monitoring, Cramer just does not specifically mention displaying the status information that is retrieved. Cowan also teaches that the above process is better suited for management and monitoring of network devices. (Cowan column 1, line 66 – column 2, line 10)

Wherein said single action is a button click by the user on said graphical user interface. (Cowan Figures 13, 14, and 16; These clearly show any number of operations can be performed by a single action click within the GUI).

As per claim 17:

A method for providing a user with an application monitoring and disaster recovery management tool, comprising the steps of:

deploying a first plurality of intelligent agents within a primary computing environment, said primary computing environment including a primary server executing an application, (Cramer column 4, lines 41-44) and wherein each of said first plurality of intelligent agents monitors a metric related to said application; (Cramer column 5, lines 29-32; the monitor for the server checks a number of software and hardware elements for failure.)

a plurality of states, each of said plurality of states being rendered by one of said first plurality of intelligent agents; (Cramer column 5, lines 29-32; the monitor for the server checks a number of software and hardware elements for failure.)

performing a failure switch-over from said primary computing environment to a secondary computing environment having a secondary server capable of executing said application (Cramer column 4, lines 24-26) in response to a first input received from the user via said graphical interface; (Cramer column 5, lines 15-19)

whereby said method allows for disaster recovery and fault tolerance, and limits computing down-time experienced by end users of said primary computing environment. (Cramer column 2, lines 59-64; column 4, lines 24-26)

Cramer fails to explicitly disclose a method using a management server to monitor a first and second server health conditions, and to issue a failover sequence between the two if a server fails.

In Wang figure 1, elements 110, 120, and 160, Wang clearly discloses using a management server to monitor a first and second server health conditions, and to issue a failover sequence between the two if a server fails. It would have been obvious to a person of ordinary skill in the art at the time of invention to include the server health monitoring system as taught Wang in order to create a better failover method. This would have been obvious because Wang teaches that the above method is better suited for a less expensive and more reliable monitoring system. (Wang column 1, line 65 – column 2, line 16.)

wherein the management server is in communication with the primary computing environment and a secondary computing environment; (Wang figure 1, element 160)

Cramer and Wang fail to explicitly disclose that the graphical user interface is capable of displaying the metric corresponding to each of said first plurality of intelligent agents.

In column 2, lines 59-65; Cowan clearly discloses a system wherein the GUI displays information from the monitoring and control of the servers on the network. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify Cramer to include the capability of the GUI to display the server information as taught by Cowan, in order to keep the user better informed of the status of the servers. This would have been obvious because both Cowan and Cramer use GUI for server monitoring, Cramer just does not specifically mention displaying the status information that is retrieved. Cowan also teaches that the above process is better suited for management and monitoring of network devices. (Cowan column 1, line 66 – column 2, line 10)

Wherein said single action is a button click by the user on said graphical user interface. (Cowan Figures 13, 14, and 16; These clearly show any number of operations can be performed by a single action click within the GUI).

As per claim 19:

The method for providing a user with an application monitoring and disaster recovery management tool, comprising the step of:

deploying a first plurality of intelligent agents within a primary computing environment, said primary computing environment including a primary server executing an application, (Cramer column 4, lines 41-44) and wherein each of said first plurality of intelligent agents monitors a metric related to said application; (Cramer column 5, lines 29-32; the monitor for the server checks a number of software and hardware elements for failure.)

a plurality of states, each of said plurality of states being rendered by one of said first plurality of intelligent agents; (Cramer column 5, lines 29-32; the monitor for the server checks a number of software and hardware elements for failure.)

performing a failure switch-over from said primary computing environment to a secondary computing environment having a secondary server capable of executing said application (Cramer column 4, lines 24-26) in response to a first input received from the user via said graphical interface; (Cramer column 5, lines 15-19)

performing a switch-back from said secondary computing environment to said primary computing environment (Cramer column 4, lines 47-50) in response to a second input received from the user via said graphical interface. (Cramer column 5, lines 25-28)

whereby said method allows for disaster recovery and fault tolerance, and limits computing down-time experienced by end users of said primary computing environment. (Cramer column 2, lines 59-64; column 4, lines 24-26)

Cramer fails to explicitly disclose using a management server to monitor a first and second server health conditions, and to issue a failover sequence between the two if a server fails.

Art Unit: 2114

In Wang figure 1, elements 110, 120, and 160, Wang clearly discloses using a management server to monitor a first and second server health conditions, and to issue a failover sequence between the two if a server fails. It would have been obvious to a person of ordinary skill in the art at the time of invention to include the server health monitoring system as taught Wang in order to create a better failover method. This would have been obvious because Wang teaches that the above method is better suited for a less expensive and more reliable monitoring system. (Wang column 1, line 65 – column 2, line 16.)

wherein the management server is in communication with the primary computing environment and a secondary computing environment; (Wang figure 1, element 160)

Cramer and Wang fail to explicitly disclose that the graphical user interface is capable of displaying the metric corresponding to each of said first plurality of intelligent agents.

In column 2, lines 59-65; Cowan clearly discloses a system wherein the GUI displays information from the monitoring and control of the servers on the network. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify Cramer to include the capability of the GUI to display the server information as taught by Cowan, in order to keep the user better informed of the status of the servers. This would have been obvious because both Cowan and Cramer use GUI for server monitoring, Cramer just does not specifically mention displaying the status information that is retrieved. Cowan also teaches that the above process is better suited for

Art Unit: 2114

management and monitoring of network devices. (Cowan column 1, line 66 – column 2, line 10)

Wherein said single action is a button click by the user on said graphical user interface. (Cowan Figures 13, 14, and 16; These clearly show any number of operations can be performed by a single action click within the GUI).

As per claim 23:

Claim 23 is a article of manufacture claim corresponding to the method claim 17. Therefore, claim 23 is rejected for the same rationale set forth in claim 17.

As per claim 24:

The article of manufacture of claim 23, wherein said application is an electronic mail application, (Cowan column 8, lines 15-19) and said failure switch-over comprises the step of temporarily changing the hostname of said secondary server to the hostname of said primary server. (Cramer column 5, lines 38-45)

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer (6,920,579) in view of Wang (6,587,970) in view of Cowan (6,115,743) in further view of Sekizawa (2002/0138612).

As per claim 25:

Cramer and Cowan fail to explicitly disclose means for causing the computer to query said application once every pre-determined time period in order for each said plurality of intelligent agents to monitor said corresponding metric related to said application.

On pages 24 and 25 paragraphs 0291 and 0293; Sekizawa clearly discloses a system for setting up pre-determined time intervals for network devices. It would have been obvious to a person of ordinary skill in the art at the time of invention to include the time interval system as taught by Sekizawa in order to create a superior network device monitoring system. This would have been obvious because Sekizawa teaches that this system is better suited for reduced cost monitoring and increases monitoring reliability, no matter how many devices are connected. (Sekizawa page 1, paragraph 0010)

Response to Arguments

Applicant's arguments with respect to claims 11, 17, 19, 23, and 24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 2114

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Assessor whose telephone number is (571) 272-0825. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571)272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BA


SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER